

## Medical Marijuana Questions and Answers

**Q: Is the use of medical marijuana legal in Hawaii?**

**A:** Under the federal Controlled Substances Act, marijuana is classified as a Schedule 1 controlled substance. The manufacture, distribution, or possession of marijuana is a federal criminal offense and it may not be legally prescribed by a physician. In October 2009, however, the Obama Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law. In Hawaii, individuals suffering from certain “debilitating medical conditions” may use and possess an adequate supply of marijuana to alleviate the symptoms of their medical condition, provided that the supply does not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

**Q: Since medical marijuana use is illegal under federal law, does that mean tenants in federal public and assisted housing are not allowed to use their medical marijuana?**

**A:** Since marijuana is still classified as a Schedule 1 controlled substance under federal law, a person’s use of medical marijuana is a violation of the housing program rules. The United States Department of Housing and Urban Development (HUD) has stated that PHAs and owners of federally assisted housing may not grant requests by current or prospective tenants to use medical marijuana as a reasonable accommodation for their disabilities.

**Q: I own a multi-story apartment building that has a no-smoking policy. A tenant recently made a request for a reasonable accommodation to smoke his prescribed medical marijuana. If I deny his request, will I be in violation of fair housing laws?**

**A:** There has been no official guidance from HUD’s fair housing enforcement division regarding the use of medical marijuana in private housing accommodations. The general consensus is that it is unlikely HUD would pursue a federal fair housing claim for a refusal to permit the use of medical marijuana. Hawaii has not stepped in to disagree with the federal government on this issue and most state courts nationwide have ruled against medical marijuana users on claims of disability discrimination for a housing provider’s failure to accommodate medical marijuana use.

**Q: My tenant recently told me he uses medical marijuana daily and has three plants growing in his unit. I have never had any complaints from his neighbors and he’s a great tenant. I do not want to evict him, but I am afraid that I might get in trouble for knowingly allowing someone to use and grow marijuana on my property. What should I do?**

**A:** Under state law, it is legal for a person using medical marijuana to grow and possess an adequate supply of marijuana. Under the federal law, the Obama Administration has encouraged prosecutors not to prosecute people who legally distribute marijuana for medical purposes under their state law. You should be safe so long as you are only aware of your tenant’s legal use and growing of marijuana and are not involved in any illegal use and manufacture, but you should check with your attorney to get legal advice to help you weigh your options.

**Q: My new tenant has a medical marijuana card from California. I am not against his use of medical marijuana as long as it is legal. Can he legally use medical marijuana in Hawaii with his California card?**

**A:** No, Hawaii does not recognize medical marijuana cards from other states. Your tenant must obtain a Hawaii medical marijuana card through a physician licensed in Hawaii with an active Controlled Substance Registration.

See Hawaii Revised Statutes (HRS) § 329-121 through § 329-128.